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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0225; FRL-9927-04-Region3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Minor New Source Review Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a January 24, 2013 State Implementation Plan (SIP) revision submitted for the State of Maryland by the Maryland Department of the Environment (MDE). This revision pertains to preconstruction permitting requirements under Maryland's minor New Source Review (NSR) program. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0225 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: campbell.dave@epa.gov.
- C. Mail: EPA-R03-OAR-2015-0225, David Campbell, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0225. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215)814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION: On January 24, 2013, MDE submitted a revision to the Maryland SIP.

I. Background

The proposed revision consists of amendments to Regulation .09 under section 26.11.02 of the Code of Maryland Regulations (COMAR). An amendment to COMAR 26.11.01.01 inadvertently widened the universe of sources that are required to obtain a permit to construct under COMAR 26.11.02.09. The previously approved version of COMAR 26.11.02.09A(4) requires that any “National Emission Standards for Hazardous Air Pollutants Source (NESHAP Source) as defined in section 26.11.01.01...” obtain a permit to construct. The definition of NESHAP Source at COMAR 26.11.01.01B(21) was amended and simplified (specifically, 26.11.01.01B(21)(b)), effective March 5, 2012.¹ The revised definition had the unintended consequence of requiring that all sources subject to the NESHAP obtain a permit to construct, even the small emission sources which had previously been exempt under section 26.11.02.10.

¹ It should be noted that COMAR 26.11.01.01B(21) is not part of the Maryland SIP.

The proposed revision to section 26.11.02.09A(4) allows MDE to retain the exemptions for smaller sources as originally intended and already approved in the Maryland SIP. Additionally, Regulations .09A(3) and .09A(4) under section 26.11.02 were revised to clarify that electric generating stations that meet the definitions of New Source Performance Standard (NSPS) sources and NESHAP sources are exempt from MDE permitting requirements only if they receive a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC).

II. Summary of SIP Revision

COMAR 26.11.02.09A(4) has been revised to specify that NESHAP sources "...as defined by COMAR 26.11.01.01B(21)(a)," are required to obtain a permit to construct. This corrects the unintended consequence of applying MDE permitting requirements to emission sources that would otherwise be exempt. COMAR 26.11.02.09A(6) will continue to require that all sources not explicitly exempt are required to obtain a permit to construct. Additionally, as previously discussed, Regulations .09A(3) and .09A(4) under section 26.11.02 have been revised to clarify that electric generating stations that meet the definitions of NSPS sources and NESHAP sources are exempt from permitting requirements only if they receive a CPCN from the Maryland PSC. The proposed revisions were effective in Maryland on July 8, 2013.

III. Proposed Action

EPA's review of this material indicates that it meets all applicable CAA requirements. EPA notes that in a February 10, 2012 final rulemaking action, limited approval was granted to a Maryland SIP revision that included amendments to COMAR 26.11.02.09. *See* 77 FR 6963. The reasons for that limited approval are unrelated to this action, and do not prevent EPA from

granting full approval to the currently proposed amendments to section 26.11.02.09. Therefore, EPA is proposing to approve MDE's January 24, 2013 SIP revision. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Maryland's permit to construct requirements as discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, relating to Maryland's preconstruction permitting requirements, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: April 16, 2015.

William C. Early, Acting,

Regional Administrator,

Region III.

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